

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

United States of America,) CR No. 3:09-714-CMC
)
)
 OPINION and ORDER
v.)
)
Dwayne Roderick Ross,)
)
Defendant.)

)

This matter is before the court on Defendant's *pro se* motion for reconsideration and motion to amend and supplement. ECF No. 287. Defendant filed a Notice of Appeal to the Fourth Circuit Court of Appeals on May 16, 2013.

Defendant seeks reconsideration of the court's ruling on his claim of constructive amendment of the indictment. Additionally, Defendant seeks to supplement and amend the record with material relating to his claim of ineffective assistance of counsel. *See generally* Motion. However, as a general rule, "a federal district court and a federal court of appeals should not attempt to assert jurisdiction over a case simultaneously. The filing of a notice of appeal is an event of jurisdictional significance-it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982). This jurisdictional transfer principle prevents a district court from taking any action that would impermissibly "alter the status of the case as it rests before the Court of Appeals." *Dayton Indep. School Dist. v. United States Mineral Prods. Co.*, 906 F.2d 1059, 1063 (5th Cir.1990). Therefore, when an appeal is pending, the district court retains jurisdiction only to determine matters that are "uniquely separable" and collateral to the issues involved in the appeal. *See Mary Ann Pensiero, Inc. v. Lingle*, 847 F.2d 90, 98 (3d Cir.1988). "This judge-made rule . . . was

designed to address the confusion and inefficiency that would result if both the district court and the court of appeals were adjudicating the same issues simultaneously.” *United States v. Swint*, 2007 WL 675340 (E.D.Pa. Feb. 27, 2007) (internal citations and quotations omitted).

Defendant seeks reconsideration of and amendment to the very issues he has appealed. Therefore, the court finds it is without jurisdiction to address Defendant’s motion and it is, therefore, **denied**.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON McGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
June 28, 2013